No. _____

Supreme Court, U.S.
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In The
Supreme Court of the United States

KELLY CONARD,
Petitioner,

v.

PENNSYLVANIA STATE POLICE;
DENNIS HILE; JOSEPH TRIPP,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Did the lower court make an error in granting summary judgment in that there were genuine issues of fact?

Did the lower court make an error in failing to determine that my statements were a matter of public concern and therefore, protected by the First Amendment?

LIST OF PARTIES

The petitioner is a former employee of 17½ years of the Pennsylvania State Police. The petitioner is Kelly Conard.

The respondents are the Pennsylvania State Police; Sgt Dennis Hile and Cpl Joseph Tripp, former supervisors of petitioner.

TABLE OF CONTENTS

Page:

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF AUTHORITIES vi

OPINIONS 1

JURISDICTION 2

CONSTITUTION AND
STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

REASONS WHY THE WRIT
SHOULD BE GRANTED 9

CONCLUSION 16

APPENDIX:

Opinion
United States Court of Appeals
for the Third Circuit
entered January 11, 2010 ..... A-1

Order
United States Court of Appeals
for the Third Circuit
entered February 24, 2010 ..... A-6

Order
United States Court of Appeals
for the Third Circuit
entered January 27, 2010 .....A-7

Memorandum Opinion and Order
United States District Court
for the Middle District of Pennsylvania
entered February 25, 2009.....A-8

Judgment
United States District Court
for the Middle District of Pennsylvania
entered February 25, 2009.....A-22

Order
United States District Court
for the Middle District of Pennsylvania
entered August 6, 2007 .....A-23

Order Denying Petition for Rehearing
United States Court of Appeals
for the Third Circuit
entered March 16, 2010.....A-26

Petition for Rehearing
United States Court of Appeals
for the Third Circuit,
with Attachments,
entered February 12, 2010 ..... A-28

Attachments:

Letter to Capt. William McHale
from Steven Cappelli
dated December 19, 2006 ..... A-44

Letter to Capt. William McHale
from Arlen Specter
dated December 6, 2006 ..... A-46

Background History A-48

AR. 1:02 ..... A-60

Meritorious Service Award A-61

TABLE OF AUTHORITIES

Page(s):

Cases:

Commonwealth v. Starr,
664 A.2d 1326 (1995) 12

Estelle V. Gamble,
429 U.S. 97 S. Ct. 285,
50 L. Ed. 2d 251 (1976) 11

Garcetti v. Ceballos,
547 U.S. 410 (2006) 13

Gillihan v. Shillinger,
872 F 2d 935 (10th Cir. 1989) 11

Golden v. Dion & Rosenau,
410 Pa. Super. 506, 600 A.2d 568 (1991) 11

Haines v. Kemer,
404 U.S. 519, 92 S. Ct. 594,
30 L. Ed. 2d 652 (1972) 11

Okkerse v. Howe,
521 Pa. 509, 556 A.2d 827 (1989) 11

TCF Film Corporation V. Gourley,
240 F.2d 711 (3rd Cir. 1957) 11

Constitutional Provision:

US CONST. AMEND. I ..... I, 2, 3, 13

Rules:

Fed. R. Civ. P. 50 11

Fed. R. Civ. P. 56(c) 2, 3

Other:

5 Am. Jur. 2d Appeal and Error section 744 12

21 C.J.S. Courts section 149a 12

A. Vestal,
Law of the Case single-suit preclusion,
12 Utah L. Rev. 1 (1967) 12, 18

Joan Steinman,
Law of the Case: A Judicial Puzzle in
Consolidated and Transferred Cases and in
Multidistrict Litigation,
135 U. Pa. L Rev. 595 (1987) 12, 18

Wright & Miller,
9 Federal Practices and Procedure:
Section 2533-37 11

PETITION FOR WRIT OF CERTIORARI

The petitioner is Kelly Conard *Pro Se*. I am respectfully petitioning the Court for a writ of certiorari to review the judgment of the court of appeals. Based on all documentation submitted to the court, the court could not reasonably determine the following because respondents submitted no documentation to support these allegations.

That I abused sick leave

That I had credit issues

That I left a job in Texas due to stress

That breaking the chain of command to call Sgt Hile's supervisor was my job duty.

All of these allegations are disputed in the statement of the case.

OPINIONS

The Order dated September August 6, 2007 signed by Judge Muir denied defendants' motion for leave to file a dispositive motion. The judge stated that the defendants have not explained why they could not have filed a summary judgment motion after May 31, 2007 and before July 2, 2007 as required by an order dated April 16, 2007. Consequently we will deny the motion for leave to file a dispositive motion. Therefore it is hereby ordered that defendant's motion for leave to file a dispositive motion (Doc.31) is denied.

SEE ORDER A-23 and A-24

On February 12th, 2010 I filed a petition for rehearing with attachments and that was denied.

On March 16, 2010 I again filed a petition for a rehearing with attachments by the court in banc was denied by the following Judges: Chief Judge, SCIRICA, Circuit Judges, SLOVITER, MCKEE, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN HARDIMAN, GREENAWAY AND NYGAARD. The vote of NYGAARD, Senior Judge of the United States Court of Appeals for the Third Circuit states that it is limited to a panel rehearing only.

SEE PETITION A-26 THROUGH A-43

Notations:

I submitted a letter asking permission granting me to submit my attachments, it was granted January 27, 2010 SEE LETTER A-7 and however a short time later I received a letter from the courts advising me to follow instructions of the courts. I called my case advisor and she then advised me that the letter was sent in error February 16, 2010. SEE LETTER A-6

JURISDICTION

This court has jurisdiction over the United States Court of Appeals for the 3rd Circuit and the United States District Court for the Middle District of Pennsylvania.

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

The answer to the question presented by this appeal turns on FED. R. CIV. P. 56(c) as to the grant of summary judgment and the first amendment of the United States Constitution as to petitioner's protected speech.

FED. R. CIV. P. 56(c)

(c) Time for a Motion, Response, and Reply; Proceedings.

(1) These times apply unless a different time is set by local rule or the court orders otherwise:

(A) a party may move for summary judgment at any time until 30 days after the close of all discovery;

(B) a party opposing the motion must file a response within 21 days after the motion is served or a responsive pleading is due, whichever is later; and

(C) the movant may file a reply within 14 days after the response is served.

(2) The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

US CONST. AMEND. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

I was a former employee of 17½ years with outstanding and commendable evaluations which included all areas. I merely retired to keep my

family together as my now ex-husband did an extended military commitment. The state allowed my now ex- husband to go on military leave without pay but with benefits and then return to his job when finished with his assignments. The state would not grant me an extended leave without pay so I had no other option than to retire. They advised me that I could be reinstated upon my return. The rules are different from the enlisted to the civilian. The two defendants' Hile and Tripp are the two supervisors who reported to the investigating trooper all these negative comments about me. They supplied no documentation to support all their allegations. On the other hand when I retired I requested my personnel file so I could use my evaluations, recommendations, meritorious award and letters of appreciation SEE MERITORIOUS AWARD A-61. The two defendants Hile and Tripp were contacted by a reference company that I hired in order to see what they were saying. They told the reference company they "would not rehire me". The evaluations signed by the two defendants completely state opposite.

I have been in this struggle for quite sometime and supplied documentation to US Senator Arlen Specter SEE SPECTER LETTER A-46 and State Legislator Steven W. Cappelli SEE CAPPELLI LETTER A-44 in hopes that they could stand behind my letter of reconsideration to the State Police, but the Pennsylvania State Police even ignored them. If professional politicians like Specter and Cappelli can look at the evidence provided to them and know the State Police may have some individuals who are not as professional and they clearly see it then why can't the Pennsylvania State Police? I was instructed by

not only professionals but former supervisors I worked with that knew my work ethic to get legal help. I had legal help in the early stages but unfortunately without a good job and the economy the way it is I am unable to afford it. I am hopeful that my professional experience will carry me though. I might add that before I retired from the Pennsylvania State Police that I had a sit down conference with Sgt Hile, one of the defendants as he was one of the supervisors; I expressed myself in how I really did not want to retire but I wanted to keep my family together and he actually told me not to worry that upon my return he would help me in any way to get back on the job and into the swing of things again. I even had spoken to him while on our military leave as my now ex-husband who is still on the job was still covered by the State Police medical benefits and also received a stipend while on leave, we often would check in to see if any changes were made. During our phone conversations he would always say "let me know if there is anything I can help you with". He is retaliating against me because I had made a better decision than he did. He probably was reprimanded for not doing his job; when I broke the chain of command SEE CHAIN OF COMMAND A-60 by calling his supervisor and of course with me being the little police communications operator; I would have never heard if he was or not. I worked for the department for 17½ years and I still can't believe the corruptness that goes on behind closed doors. The areas that they presented no evidence to support or on which there was conflicting evidence requiring a determination of facts by a jury were as follows:

Sick Leave:

When I retired they owed me money as I did not use my sick time. The sick leave restriction they had placed me on was incorrect. I had been involved in a motor vehicle accident on Jan 18, 1999 and sustained injury after a fall on the ice. I called my employer and advised that I was taking a personal day as I was just involved in an accident on my way to work. The accident required the use of a wrecker. It took approximately 3 hours to get the accident taken care of and for me to get home. Cpl Tripp, one of the defendants who was my direct supervisor called me at home and advised he was not going to approve a personal day. Please keep in mind we are to be able to use our personal days as unpredicted things happen. The State Police grant personal days for every thing such as picnics, birthdays, golf tournaments, fund raisers etc. however, I was forced to take a sick day after being injured in an accident even though I wanted to use one of my 4 personal days that they still owed me for the year. With the injury I sustained, I had to follow up with a doctor. I have all documentation of such. If I had abused sick leave the state would have not had to pay me for unused sick leave when I retired. Both Senator Specter and State Legislator Cappelli were supplied all documentation. They both wrote letters on my behalf.

See Specter Letter A-46 A-47 SEE Cappelli Letter A-44 A-45.

The credit issues are due to my ex-husband (just recently divorced) who is still on the job at the Pennsylvania State Police Academy as an instructor. I consolidated some of his debt onto mine in order for

him to get a security clearance for an Air Force assignment. The Air Force questioned his credit issues. He is still on the job with the Pennsylvania State Police.

The job I resigned from was a job working as a medical dispatcher. I left that job as I did not like the medical field and was looking for a job that was equivalent to the job I worked for 17½ years along with receiving better pay and benefits. I had worked for the Pennsylvania State Police as a Police Communications Operator for 17½ years and knew the job like the back of my hand. The jobs by no means are alike. The director of human resources who contended that I left this job due to stress had no basis for that statement.

The phone call I made to Sergeant Hile's supervisor was in no way my job duty description. I broke the chain of command SEE CHAIN OF COMMAND A-60 as when I contacted Sgt Hile who was the on call duty supervisor he would not approve for me to call other troopers in to help two troopers that were under fire and also to protect the innocent civilians of the commonwealth who were also in that area. The troopers in the field were calling for backup immediately and Sgt Hile responded to me "just have them sit on it for awhile". Had I did what Sgt Hile wanted to do, we might have two dead troopers and possibly a couple of dead innocent citizens. I broke the chain of command which is against the State Police own rules of the administration regulations and the field regulations. They are the bibles of the state police. I called Sgt Hile's supervisor Lieutenant Witherite (who was off duty) and spoke out as a matter of public concern and advised him of the situation; that the troopers

were demanding back up immediately as they were under fire and that there were innocent citizens in the area as well. I told Lt Witherite that I had broken the chain of command because Sgt Hile would not approve back up for the troopers who needed immediate help. He advised me not to worry that he would take care of Sgt Hile. The Lt who was off duty responded like a normal on call supervisor would. He gave me permission to do what was necessary to protect not only his troopers but the innocent people of the commonwealth. Please note the Lt was off duty, it was approximately 3:00 in the morning. I made this call and spoke out as a matter of public concern and my employer did not have adequate justification for treating me differently than any other member of the general public. Certainly, the safety of officers is a matter of "grave" public concern and there was no justification for treating me any different than any other member of the general public for voicing concern not only for the two troopers but also the innocent citizens that were involved.

They mention interpersonal problems; the only problems were the defendant's. Everyone that worked with me knew my work ethic of those being the highest of standards. I have documentation of such, not just from co-workers, but other departments and supervisors as well. I still ask myself; why would Sgt Hile one of the defendants along the section Lieutenant give me a meritorious award if I was a sub-standard employee and did all of these things they are alleging? They had our records and identification division take a picture of them presenting me my meritorious award at my 15

yr mark to put in the state police communicator SEE MERITORIOUS AWARD A-61

All of these allegations completely refute what the defendant's actually put in writing in my yearly evaluations giving me commendable and outstanding ratings in all areas mentioned, not to mention their signature is required on such. I have documentation to show complete opposite and not to mention documentation from the professional reference company a third partly outside that I hired to do a reference check. Cpl Tripp actually told her "I would not re-hire her"; again this is going against not only the state police rules of the administrative regulations but against the law. The Pennsylvania State Police along with Sgt Dennis Hile and Cpl Joseph Tripp have ruined any successful chances of me ever getting another professional job. The job I had with them is all the experience I have, not to mention what they are telling the people outside the department.

REASONS WHY THE WRIT SHOULD BE GRANTED

Most important there is an order dated August 6, 2007 signed by Judge Muir states that "defendants have not explained why they could not have filed a summary judgment motion after May 31, 2007 and before July 2, 2007, as required by order of April 16, 2007. Consequently, we will deny the motion for leave to file a dispositive motion.

NOW, THEREFORE, IT IS HERBY ORDERED THAT:

Defendants' motion for leave to file a dispositive motion (doc. 31) is denied."

SEE ORDER A-23 A-24

When reviewing the Civil Docket for the case it is all clear that the dispositive motion was denied by Judge Muir SEE ORDER A-23 A-24. It was clearly denied. Judge Muir later recused himself from hearing my case due to knowing my ex-husband. Judge Muir does not know me or the defendants. His recusal was September 28, 2007. The defendants then filed a motion with the new assigned Judge Vanaskie for an extension of time to file a reply brief on October 15, 2007. The defendants were given ample time to file their summary judgment with Judge Muir and after Judge Muir recused himself the defendants used the reassigned Judge Vanaskie to buy extended time which was granted. Judge Vanaskie granted the summary judgment. I feel this is not a fair justice on my part as Judge Muir denied as stated in the order SEE ORDER A-23 A-24 and then Judge Vanaskie went against an order issued by Judge Muir. He overruled the stability of law.

Judge Vanaskie has also demonstrated a bias against plaintiff as shown by his statements.

"Common-Sense realization that government offices could not function if every employment decision became a constitutional matter"

"This court is not the appropriate forum in which to review the multitude of personnel decisions that are made daily by public agencies"

"After resigning from her position" I retired with 17½ years service due to a military commitment.

Except under the most extraordinary circumstances, judges of co-ordinate jurisdiction sitting in the same court and in the same case should not overrule the decisions of each other. TCF Film Corporation V. Gourley, 240 F.2d 711 (3rd Cir. 1957)

The propriety of granting or denying the motions is tested both in the trial court and on appeal by the same rule: Both the trial court and the reviewing court must view the evidence and all inferences most favorably to the party against whom the motions are made. Fed. R. Civ. P. 50; Wright & Miller, 9 Federal Practices and Procedure: Section 2533-37.

A *Pro Se* litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. Haines v. Kemer, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972); see also Estelle V. Gamble, 429 U.S. 97 S. Ct. 285, 292, 50 L. Ed. 2d 251 (1976); Gillihan v. Shillinger, 872 F 2d 935, 938 (10th Cir. 1989).

Judges of coordinate jurisdiction sitting in the same case should not overrule each others' decisions. See.e.g., Okkerse v. Howe, 521 Pa. 509, 516-517, 556 A.2d 827, 831 (1989). This rule, known as the "coordinate jurisdiction rule," is a rule of sound jurisprudence based on a policy of fostering the finality in an effort to maintain judicial economy and efficiency. Id. See also Golden v. Dion & Rosenau, 410 Pa. Super. 506, 510, 600 A.2d 568, 570 (1991) (once a matter has been decided by a trial judge the decision should remain undisturbed, unless the order is appealable and a appeal therefrom is successfully prosecuted). This coordinate jurisdiction rule falls squarely within the ambit of a

generalized expression of the "law of the case" doctrine. This doctrine refers to a family of rules which embody the concept that a court involved in the later phases of a litigated matter should not reopen questions decided by another judge of that same court or by a higher court in the earlier phases of the matter. See 21 C.J.S. Courts section 149a; 5 Am. Jur. 2d Appeal and Error section 744. Among the related but distinct rules which make up the law of the case doctrine are that...(3) upon transfer of a matter between trial judges of coordinate jurisdiction, the transferee trial court may not alter the resolution of a legal question previously decided by the transferor trial court. See Joan Steinman, Law of the Case: A Judicial Puzzle in Consolidated and Transferred Cases and in Multidistrict Litigation, 135 U. Pa. L. Rev. 595, 602 (1987) (citing A. Vestal, Law of the Case single-suit preclusion, 12 Utah L. Rev. 1, 1-4 (1967))

In this case, the Honorable Vanaskie sits in coordinate jurisdiction with the Honorable Muir. As already noted, "(j)udges of coordinate jurisdiction sitting in the same case should not overrule each others' decisions. "Commonwealth v. Starr, 664 A.2d 1326 at 1331 [1995]. "Departure...is allowed only in exceptional circumstances such as where there has been an intervening change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the prior holding was clearly erroneous and would create a manifest injustice if followed. "Starr, 664 A.2d 1326 at 1332. None of these was present in my case.

I am hopeful that the United States Supreme Court can look at this and know that it was not a fair decision on Judge Vanaskie's part to completely

go against the rulings of Judge Muir. Judge Muir has been in the practice since 1970. I am told that Judge Muir is tough and goes by the book for judicial procedures. He set a dead line for defendants to submit their summary judgment and the defendant's failed to do so even with ample amount time. The defendant's should have no entitlement for the summary judgment as a matter of law.

Judge Vanaskie has been in the practice since 1994 and has 16 years of experience, while Judge Muir is a seasoned judge with 40 years experience and I am hopeful that the US Supreme Court can grant me a fair trial and keep the order in denying summary judgment issued to the defendant's by Judge Muir.

Judge Vanaskie was only presented case law by the State Police and they could not supply supporting evidence to support their argument, only case law, nothing specifically about my case and the allegations they made. My case is different from any presented as I was an employee of their department, The Pennsylvania State Police for 17½ years and had to retire in order to do a military commitment as due to 9-11 the military was short handed on officers and needed help.

Secondly, the Supreme Court has held that an employee's statements are protected under the first amendment if an employee speaks on a matter of public concern or the government employer did not have adequate justification for treating the employee differently from any other member of the general public, Garcetti v. Ceballos, 547 U.S. 410, 418 (2006). Certainly, the safety of officers is a matter of "grave" public concern and there was no justification

for treating appellant differently from any other member of the general public for voicing this concern.

The Pennsylvania State Police along with Sgt Dennis Hile and Cpl Joseph Tripp went against the rules they are governed by of the Pennsylvania State Police by:

a. Stating that my call to Sgt Hile's supervisor was my job duty. It was not my job duty to make the call and break the chain of command rule of the administration regulations. Each and every employee and member is given a copy of the administration regulations and the field regulations upon hiring and you are instructed to follow those rules and if you didn't you could be reprimanded or fired.

b. They broke another Pennsylvania State Police administrative rule and possibly a law when they voluntarily gave information to a third party outside the department to a reference company that I had hired. They told the professional reference company Allison and Taylor that they would not re-hire me, that I couldn't take constructive criticism, that I didn't get along with my co-workers, abused sick leave and that I only worked midnights so I didn't have to deal with anyone. They have no documentation to up-hold what they told the reference company. I have documentation signed by both of them showing complete opposite and not to

mention a photo of Sgt Hile presenting me a Meritorious award at my 15 yr. mark. The only thing they are allowed to tell a person that is doing a reference check according to the administration regulations of the Pennsylvania State police is whether or not I was an employee and did I leave voluntarily or involuntarily. The only way they can give other information is with a signature from the former employee allowing them to do so. This had made a severely negative impact on individuals considering me for employment. I went to a temp agency for employment and advised of my situation and they never called me to go on any interviews even with 17½ years experience. When applying for a position with law enforcement they always conduct a background investigation. This whole case has ruined my success in any type of law position. When I retired from the Pennsylvania State Police to accompany my now ex-husband (due to numerous affairs) who still holds a supervisor position with the Pennsylvania State Police in doing a military commitment as the military was short handed on officers.

Lastly, upon my **retirement** from the Pennsylvania State Police, I was making $20.00 an hour plus shift differential along with receiving the benefits consisting of medical, dental, eyes, paid prescriptions, and life insurance and not to mention had a good retirement that was estimated by the state employee retire system upon my full retirement at a minimum of $5,000.00 per month

plus benefits. I was only 19 years old when I started with the Pennsylvania State Police in 1985 and retired in 2002. The retirement individual told me that I could easily be reinstated upon my return and that is exactly what I intended to do after the completion of the military commitment was to get back, hit the ground running and get that great retirement I had been working for. I was half way there. The Pennsylvania State Police along with Sgt Dennis Hile and Cpl Joseph Tripp have ruined all chances for me to be successful in the area which I worked for 17½ years and it's half a career invested along with experience down the drain. I am now 44 years old with only a year and half of college under my belt from back in 1983 and I now struggle everyday because of what the Pennsylvania State Police, Sgt Dennis Hile and Cpl Joseph Tripp have done to me and what they have told people on the outside. I worked way too hard for 17½ years and to this day I am hopeful that the judicial system will not fail me. I did have a lawyer in the early stages but I could not afford the cost when it came to an appeal. I continued *Pro Se* with the faith that the higher court will allow the furthering of the administration of justice.

CONCLUSION

I, Kelly Conard, am respectfully asking the United States Supreme Court to review my case. I have extensive documentation that can be presented at which time a trial might be granted. My case is in no way like the case law that was presented. The Pennsylvania State Police along with Sgt Dennis Hile and Cpl Joseph Tripp have no documents to uphold their allegations. My personnel file completely refutes what these individuals have relayed to the

lower courts. It holds both of their signatures. It is my sincere hope that I am granted a fair trial. I worked for this department for 17½ years and was quite proud. (SEE BACKGROUND HISTORY A-48 THROUGH A-59). While the majority are the true trust worthy and would lay down their life in order to protect; there are the others who do swerve from the path of duty. I can honestly say I have witnessed some of the corruptness that has happened behind closed doors. I know of others being "picked on" or "singled out" because they don't fit in or go along with that certain click. As a matter of fact defendant Cpl Joseph Tripp's father was a Captain and is now retired. Cpl Tripp on one occasion identified himself as Captain Tripp to an outside person. All the supervisors in this case along with some of the administrative individuals all were golfing buddies and not to mention my now ex-husband who had numerous affairs has contact with those individuals as he is a supervisor now. I am sure this has impacted on my case. Judge Vanaskie a 16 year judge went against Judge Muir, a 40 year judge and granted a summary judgment when in fact defendants had ample time to file such with supporting briefs when Judge Muir was the 1st Judge assigned. Judge Muir even states in the order dated August 6, 2007 "Defendants have not explained why they could not have filed a summary judgment motion after May 31, 2007 and before July 2, 2007, as required by our order of April 16, 2007". He clearly denied the summary judgment. Judge Muir later recused himself as he knew my previous ex-husband from 12 years ago. Judge Muir does not know me or the defendant's. If Judge Muir does know my ex-husband, and my ex-husband had any

impact on my case it would have been thrown out as I am positive my ex-husband would not want me to be successful at anything. Judge Muir did not know who my ex-husband was at the time he made his decision and orders in my case. The case was then assigned to Judge Vanaskie. Just after the reassigning of the judge, the defendants again ask for extension of time to file a reply brief even though it had already been denied by Judge Muir. Judge Vanaskie not only once but twice granted extension of time to defendants and then granted the summary judgment. I feel this is a case of "judge shopping". Just another example of how The Pennsylvania State police use their power and people to get what they want. The general rule according to Joan Steinman, Law of the Case: A Judicial Puzzle in Consolidated and Transferred Cases and in Multidistrict Litigation, 135 U. Pa. L. Rev. 595, 602 (1987) (Citing A. Vestal, Law of the Case Single-Suit Preclusion, 12 Utah L. Rev. 1, 1-4 (1967) is that when a district judge has entered an order on judgment and the case is then transferred to another judge, the second judge should not overrule the earlier order or judgment made by the first judge. The supreme court of Massachusetts wrote, "A judge should hesitate to undo his own work, still more should he hesitate to undo the work of another judge". To explain the "natural reluctance...to reverse the first judge's ruling, Professor Vestal commented on "the distaste judges have for repeating work which has already been done; the general respect that one judge has for another; and the desire for stability in the law. In Vestal's view, these considerations lead to an unwillingness to

disregard law of the case doctrine except under the most extraordinary circumstances.

I was then aware of Judge Vanaskie being appointed into the United States Court of Appeals for the Third Circuit before my case was denied at that level. If Judge Vanaskie considered looking at what Judge Muir had already ordered he probably would have looked at it differently. The state police have the good ole boy club and I'm sure there is more of those clubs out there but it is in my sincere hopes that the United States Supreme Court can grant me a trial in order for me to show/prove all my facts presented other than just the case law; that I am an honest and trust worthy citizen who gave 17½ years of devoted/dedicated service to the Pennsylvania State Police and have now been made to look the complete opposite from the Pennsylvania State Police, Sgt Dennis Hile and Cpl Joseph Tripp as they have the power to do so.

Respectfully Submitted

/s/ Kelly Conard

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APPENDIX
TABLE OF CONTENTS

Opinion
United States Court of Appeals
for the Third Circuit
entered January 11, 2010 ..... A-1

Order
United States Court of Appeals
for the Third Circuit
entered February 24, 2010 ..... A-6

Order
United States Court of Appeals
for the Third Circuit
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United States District Court
for the Middle District of Pennsylvania
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Judgment
United States District Court
for the Middle District of Pennsylvania
entered February 25, 2009 ..... A-22

Order
United States District Court
for the Middle District of Pennsylvania
entered August 6, 2007 ..... A-23

Order Denying Petition for Rehearing
United States Court of Appeals
for the Third Circuit
entered March 16, 2010 ..... A-26

Petition for Rehearing
United States Court of Appeals
for the Third Circuit,
with Attachments,
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Attachments:

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dated December 19, 2006 ..... A-44

Letter to Capt. William McHale
from Arlen Spencer
dated December 6, 2006 ..... A-46

Background History..... A-48

AR. 1-02..... A-60

Meritorious Service Award..... A-61

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 09-1837

KELLY CONARD,
Appellant

v.

PENNSYLVANIA STATE POLICE; DENNIS HILE;
JOSEPH TRIPP

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 04-06-cv-01450)
District Judge: Honorable Thomas I. Vanaskie

Submitted Pursuant to Third Circuit LAR 34.1(a)
December 24, 2009

Before: McKEE, FUENTES and NYGAARD,
Circuit Judges
(Opinion entred: January 11, 2010)

OPINION

PER CURIAM

Kelly Conard appeals from the District Court's grant of summary judgment in favor of Appellees in her employment discrimination lawsuit. For the following reasons, we will affirm the District Court's order.

Conard worked as a Police Communications Operator ("PCO") with the Pennsylvania State Police ("PSP") from 1985 until November 2002, when she voluntarily retired to join her husband who was serving in the military in Texas. In August 2004, Conard notified the staff of the PSP that she wanted to come back to work as a PCO. The selection process for the PCO position consisted of an interview and a background investigation. The PSP interviewed Conard for the PCO position but she was not selected because the results of the background investigation were unsatisfactory. Specifically, Appellees Hile and Tripp, as well as a former co-worker, told the trooper conducting the background investigation that Conard abused sick leave during her previous employment and had to be placed on leave restriction. The background investigator also found that Conard's credit history was troublesome because she was delinquent on several of her accounts. Further, the investigation revealed that Conard left a former job in Texas as an emergency dispatcher in 2003 due to stress. The PSP ultimately hired another female applicant for the position.

In her lawsuit, Conard alleged that Hile and Tripp retaliated against her in violation of her rights under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment by not recommending her for the PCO position. She

alleged that Hile treated her differently after she called his supervisor to request assistance for troopers in an emergency situation. She also brought a claim of gender discrimination under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, et seq., and the Pennsylvania Relations Act against the PSP. After the close of discovery, the Appellees moved for summary judgment. At oral argument before the District Court, Conard withdrew all of her claims except for the First Amendment retaliation claim and the equal protection claims against Hile and Tripp. The District Court granted Appellees' motion for summary judgment and entered judgment in their favor. Conard filed a timely notice of appeal challenging the District Court's order.

We have jurisdiction over the final orders of district courts under 28 U.S.C. § 1291. We exercise plenary review over the District Court's grant of Appellees' motion for summary judgment. See Monroe v. Beard, 536 F.3d 198, 206 (3d Cir. 2008). We apply the same standard in reviewing a motion for summary judgment as the District Court. Id. A motion for summary judgment should be granted only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

First, we agree with the District Court and Appellees that Conard's equal protection claim is foreclosed by the Supreme Court's decision in Engquist v. Oregon Department of Agriculture, 128 S. Ct. 2146 (2008). In that case, the Court determined that the class-of-one theory, under which Conard brought her equal protection claim, is not applicable to the public employment context. Id. at

2148-49.[1] Therefore, the District Court properly granted summary judgment on this claim.

We further agree that Conard failed to raise a genuine issue of material fact with respect to her First Amendment claim. The Supreme Court has held that when a public employee makes a statement during the course of her official duties, the employee is not speaking as a citizen for First Amendment purposes, and thus "the Constitution does not insulate [her] communications from employer discipline." Garcetti v. Ceballos, 547 U.S. 410, 421 (2006). Only if the employee speaks on a matter of public concern or the government employer did not have an "adequate justification for treating the employee differently from any other member of the general public," are the employee's statements protected under the First Amendment. Id. at 418.

Here, Conard alleges that Hile retaliated against her because she made a phone call to Hile's supervisor about his failure to respond to a shooting incident. According to Conard, she "broke the chain of command" and called Hile's supervisor so that he would assist two troopers who needed backup. (Appellant's Br. at 3.) Inasmuch as Conard's duties included answering phone calls regarding police services and dispatching messages to state troopers, Conard's call to a state trooper regarding a police emergency was an act performed during the course of her duties. Conard's arguments that the call was

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[1] A plaintiff states a claim under the class-of-one theory if she can demonstrate that defendant intentionally treated her differently from others similarly situated and that there was no rational basis for such treatment. Phillips v. County of Allegheny, 515 F.3d 224, 243 (3d Cir. 2008).

outside of her "job description" and contrary to the PSP manuals are unpersuasive. See Garcetti, 547 U.S. at 424-25 (Formal job descriptions are neither necessary nor sufficient to demonstrate that a task is within an employee's professional duties for First Amendment purposes.) Further, we agree with the District Court that Conard's attire at work, Tripp's refusal to approve a personal day, and Tripp's criticism of Conard's phone manners are not matters of public concern. Id. at 420 ("[W]hile the First Amendment invests public employees with certain rights, it does not empower them to 'constitutionalize the employee grievance.'") (citation omitted).

For the foregoing reasons, we will affirm the District Court's order granting Appellees' motion for summary judgment.[2]

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[2] Appellant's motion to supplement the record is denied. See Fassett v. Delta Kappa Epsilon (New York), 807 F.2d 1150, 1165 (3d Cir. 1986) ("The only proper function of a court of appeals is to review the decision below on the basis of the record that was before the district court.")

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 09-1837

Conard v. PA State Police

(M.D. Pa. No. 06-cv-01450)

Entered: February 24, 2010

ORDER

It appearing that the Noncompliance Order entered February 16, 2010 was issued in error,

It is O R D E R E D that the Noncompliance Order entered February 16, 2010 is hereby vacated and the Petition for Rehearing will be submitted to the Court.

For the Court,

/s/Marcia M. Waldron
Clerk

Dated: February 24, 2010
CJG/cc: Kelly Conard
Howard G. Hopkirk, Esq.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

January 21, 2010

No. 09-1837

KELLY CONARD,

Appellant

v.

PA STATE POLICE, et al

(M.D. Pa No. 4-06-cv-01450)

Present: NYGAARD, Circuit Judge

Motion by Pro Se Appellant for Extension of Time to file Petition for Rehearing and to Attach Exhibits.

/s/Caitlyn J. Gillie
Case Manager (267)299-4956

Entered: 01/27/2010

O R D E R

The foregoing motion for extension of time to file a Petition for Rehearing is hereby GRANTED. Appellant must file a Petition for Rehearing on or before Wednesday, February 10, 2010. Appellant's motion to attach exhibits is GRANTED. No further extensions of time will be given.

By the Court,

/s/ Richard L. Nygaard
United States Circuit Judge

Dated: January 27, 2010
CJG/cc: Ms. Kelly Conard
Howard G. Hopkirk, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA

KELLY CONARD :

Plaintiff

v.

PENNSYLVANIA STATE POLICE, DENNIS HILE, JOSEPH TRIPP

Defendants

4:CV-06-01450
(JUDGE VANASKIE)

Entered February 25, 2009

MEMORANDUM

Currently before the Court is Plaintiff Kelly Conard's claim that the Pennsylvania State Police Department's decision not to hire her was in violation of her equal protection rights and in retaliation for past protected speech. Plaintiff contends that the decision was based on the recommendation of two former supervisors, Defendants Dennis Hile and Joseph Tripp, who she claims retaliated against her for past conduct. Currently before the Court is Sergeant Hile and Corporal Tripp's Motion for Summary Judgment. (Dkt. 44.)[1] For the reasons that follow, Defendants' Motion will be granted.

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[1] For the convenience of the reader of this Memorandum opinion, hyperlinks to the Court's electronic record and to authority cited herein have been inserted. No endorsement of

I. UNDISPUTED FACTS

Plaintiff was employed as a Police Communications Operator ("PCO") with the Pennsylvania State Police ("PSP") from 1985 until November 2002, when she voluntarily retired to join her husband who was serving in the military in Texas. (Defendants' Statement of Undisputed Material Facts ("DSUMF"), Dkt. 44-3, at ¶¶ 1, 3.) A PCO is primarily responsible for answering phone calls regarding police services and dispatching messages to state troopers. (Id. at ¶ 2.) These functions are vital to the operation of each PSP station. (Id.)

During the course of her employment with the PSP, there was a period of time in which Plaintiff reported to Corporal Joseph Tripp and Sergeant Dennis Hile. Plaintiff asserts that the only contact she had with Corporal Tripp was when she worked the day shift, but that he would single her out and treat her differently than other PCOs. (Conard Declaration, Dkt. 55, at ¶ 3.) Plaintiff alleges that she was reprimanded for not properly identifying herself during a busy period, while other PCOs were not; that Corporal Tripp refused to offer her assistance with paperwork; that he criticized what she wore to work; that he would not approve a personal leave request; and that he placed Plaintiff on a "sick leave restriction." (Id. at ¶¶ 4-7.) Plaintiff alleges she brought these facts to Lieutenant Ken Hill's attention, asserting that Corporal Tripp was "picking" on her, to which Lieutenant Hill responded, "just do what Tripp says." (Id. at ¶ 8.)

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any provider of electronic resources is intended by the Court's practice of using hyperlinks.

Sergeant Hile, Plaintiff alleges, was involved in her placement on "sick leave restriction" and treated Plaintiff unfairly as a result of her reporting a shooting incident to Sergeant Hile's supervisor. (Id. at ¶ 7-9.) Plaintiff alleges that one evening when Sergeant Hile was the Officer of the Day, she called him requesting backup for troopers who were involved in a shooting incident; Sergeant Hile apparently refused to take immediate action, and as a result of his refusal, she broke the chain of command and called Lieutenant Witherite, who promptly responded. (Id. at ¶ 9.) Other than the incidents described, Plaintiff reports little to no interaction between herself and Corporal Tripp or Sergeant Hile.

After resigning from her position as a PCO, Plaintiff was employed by American Medical Response in Texas as an emergency dispatcher. (Id. at ¶ 20.) She held this position for less than three months, leaving due to stress. (Id.) In August 2004, while still in Texas, Plaintiff contacted Dianna Davis of the PSP and notified her that she wanted to come back to work for the PSP. (Id. at ¶ 4; Plaintiff's Statement of Undisputed Material Facts ("PSUMF"), Dkt. 50, at ¶ 4.) Plaintiff completed the necessary paperwork and in November 2004, applied for a position as a PCO at the Harrisburg Centralized Dispatch Center. (DSUMF, Dkt. 44-3, at ¶ 4.) The selection process for the PCO position consisted of an interview and a background investigation, both of which required satisfactory results in order to be selected for the position. (Id. at ¶¶ 5-6.)

Plaintiff interviewed for the position on January 4, 2005. (PSUMF, Dkt. 50, at ¶ 4.) "Plaintiff was told by Bob Scott that she aced the interview and just

needed to get the formalities out of the way." (Id.) She also spoke to Sergeant Lambert, who advised her that training was to begin in March, and Dianna Davis, who advised that starting pay would be around $20.83 an hour. (Id.)

Plaintiff, in fact, had not been selected for the position based on a background investigation conducted by Trooper Elling. (DSUMF, Dkt. 44-3, at ¶¶ 7 and 9; PSUMF, Dkt. 50, at ¶ 4.) During the course of the investigation, Elling spoke to Plaintiff's former supervisors, Sergeant Hile and Corporal Tripp, and conducted a credit check. Sergeant Hile and Corporal Tripp indicated that Plaintiff had abused sick leave during her previous employment with the PSP and had been place on leave restriction. (DSUMF, Dkt. 44-3, at ¶ 11.) Plaintiff's credit history revealed financial problems. Plaintiff attributed these problems to her divorce; however, of her fourteen accounts, ten were opened after her divorce. (PSUMF, Dkt. 50, at ¶ 16, DSUMF. Dkt. 44-3, at ¶ 18.) The PSP view credit history as an indicator of an applicant's acceptance of responsibility and reliability, which are essential for the PCO position. (Bonney Declaration, Dkt. 46-2, at ¶ 11.) As a result of Trooper Elling's investigation, Plaintiff was not recommended for employment and was informed by letter in February 2005 of this decision. (DSUMF, Dkt. 44-3, at ¶ 23.)

On November 5, 2005, Plaintiff filed a charge of gender discrimination with the EEOC and the Pennsylvania Human Relations Commission. (EEOC Charge, Dkt. 46-5.) On July 24, 2006, she filed the current action against Defendants PSP, Corporal Tripp, and Sergeant Hile, alleging, in part, violation of her equal protection rights under 42 U.S.C. § 1983

and First Amendment retaliation by Sergeant Hile and Corporal Tripp. Sergeant Hile and Corporal Tripp filed the current Motion for Summary Judgment. (Dkt. 44.) The Motion has been fully briefed and oral argument was held on January 15, 2009.[2]

II. DISCUSSION

A. Standard of Review

Summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is "material" if proof of its existence or non-existence might affect the outcome of the suit under applicable law. Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986). "Facts that could alter the outcome are material facts." Charlton v. Paramus Bd. of Educ., 25 F.3d 194, 197 (3d Cir. 1994). "[S]ummary judgment will not lie if the dispute

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[2] Defendant PSP also filed a Motion for Summary Judgment. (Dkt. 42.) That motion was granted based on Plaintiff's concessions regarding failure to exhaust administrative remedies under Title VII and PSP's Eleventh Amendment immunity to suit under the Pennsylvania Human Relations Act. (Dkt. 66.) Plaintiff also conceded that there is no proof to support the allegation that Plaintiff had a protected property interest, and that thus, any procedural due process claim against Defendants is without merit. Plaintiff also conceded that Sergeant Hile and Corporal Tripp are immune from liability for any interference withprospective contractual relation claim. Thus, only the equal protection and First Amendment retaliation claims remain against Sergeant Hile and Corporal Tripp.

about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248.

Initially, the moving party must show the absence of a genuine issue concerning any material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party, and the entire record must be examined in the light most favorable to the nonmoving party. White v. Westinghouse Elec. Co., 862 F.2d 56, 59 (3d Cir. 1988). Once the moving party has satisfied its burden, the nonmoving party "must present affirmative evidence in order to defeat a properly supported motion for summary judgment." Anderson, 477 U.S. at 257. Mere conclusory allegations or denials taken from the pleadings are insufficient to withstand a motion for summary judgment once the moving party has presented evidentiary materials. Schoch v. First Fidelity Bancorporation, 912 F.2d 654, 657 (3d Cir. 1990). Rule 56 requires the entry of summary judgment if there was adequate time for discovery and a party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322.

B. Retaliation

Plaintiff asserts that Defendants' actions were in retaliation for protected speech she made while employed by the PSP. (Dkt. 52, at 6.)

> A public employee makes a protected statement for purposes of a First Amendment retaliation claim 'when (1) in making it, the employee spoke as a citizen, (2) the statement involved a matter of public concern, and (3) the governmental employer did not have an adequate justification for treating the employee differently from any other member of the general public as a result of the statement.'

Skrutski v. Marut, 288 Fed. App'x 803, 806 (3d Cir. 2008) (quoting Hill v. Borough of Kutztown, 455 F.3d 225, 241-42 (3d Cir. 2006)). If, however, a public employee makes a statement during the course of the employee's official duties, the employee is not speaking as a citizen for First Amendment purposes, and thus "'the Constitution does not insulate [his or her] communications from employer discipline.'" Id. (quoting Garcetti v. Ceballos, 547 U.S. 410, 421 (2006)). That is, "statements made by a public employee carrying out official duties . . . are not entitled to First Amendment Protection." Garvey v. Barnegat Bd. Of Educ., Civ. Act. No. 07-6134, 2008 WL 2902617, at * 6 (D.N.J. July 24, 2008).

"'Whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record.'" Hill, 455 F.3d at 242 (quoting Rankin v. McPherson, 483 U.S. 378, 384 (1987)). "When employee expression cannot be fairly considered as relating to any matter of political, social, or other concern to the community, government officials should enjoy wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First

Amendment." Connick v. Myers, 461 U.S. 138, 146 (1983). "[W]hen a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency . . . ." Id. at 147.

Plaintiff alleges that "she was retaliated against by defendant Sergeant Hile for going outside of the chain of command and making public statements about the safety and security of the public by not providing proper police manpower in dangerous situations." (Brief in Opp. to Mt. S.J., Dkt. 52, at 7.) Plaintiff appears to be referencing the phone call she made to Lieutenant Witherite about Sergeant Hile's failure to respond to the shooting incident.

This phone call was not a public statement, but instead a call made during the course of Plaintiff's duties as a PCO. Any statements made during the course of Plaintiff's call were communications made during the course of Plaintiff's official duties and thus unprotected speech. See Skrutski, 288 Fed. App'x at 806. Plaintiff received the phone call from the troopers in need of assistance while working as a PCO. A PCO's duties include answering phone calls regarding police services and dispatching messages to state troopers–Plaintiff's calls to Sergeant Hile and Lieutenant Witherite were clearly acts performed during the course of her duties and within her capacity as a PSP PCO. See Skrutski, 288 Fed. App'x at 806; Garvey, 2008 WL 2902617, at * 6.

Moreover, Plaintiff's claim that Corporal Tripp "picked" on her does not involve a matter of public

concern. Even assuming that Plaintiff made her complaints to Lieutenant Hill as a citizen, and not as an employee, which based on the evidence presented appears unlikely, Plaintiff has failed to allege that the statement involved a matter of public concern. See Hill, 455 F.3d at 241-42. Plaintiff alleges that Corporal Tripp reprimanded her for not identifying herself when she answered the phone, refused to assist her with paperwork, criticized what she wore to work, and refused to approve a personal day request. (Affidavit, Dkt. 55, at ¶¶ 4-8.) Plaintiff claims that she approached Lieutenant Hill about Corporal Tripp picking on her, and that as a result of her communications, Corporal Tripp's actions became more offensive. (Id. at ¶ 8.)

The alleged communication, however, does not involve a matter of public concern. What Plaintiff wore to work, approval of a personal day, refusal of assistance, and reprimanding an employee for improperly answering the phone are not matters that concern the public. Connick, 461 U.S. at 146. Plaintiff's statements were not related to a matter concerning the community, politics, or any other social concern. It is clear that Plaintiff's complaint regarded an employment matter over which the government enjoys wide latitude in determining appropriate action, without intrusion from the judiciary under the guise of the First Amendment. Id. "[W]hile the First Amendment invests public employees with certain rights, it does not empower them to 'constitutionalize the employee grievance.'" Garcetti, 547 U.S. at 420 (quoting Connick, 461 U.S. at 154).

Moreover, Plaintiff's argument that her speech became protected once she retired from the PSP in

2002 is without merit. Plaintiff has provided no case law in support of this proposition, nor can the Court find any to this effect. Plaintiff's speech was not protected speech when it was made, and her past unprotected speech does not transform into protected speech after her retirement. Thus, Defendants' Motion for Summary Judgment regarding the First Amendment retaliation claim will be granted.

C. Equal Protection

Plaintiff also asserts an equal protection violation under the class-of-one theory as announced in Village of Willowbrook v. Olech, 528 U.S. 562 (2000). "'The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or agents.'" Village of Willowbrook, 528 U.S. at 564 (quoting Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 445 (1923)). In Olech, the Court determined that a successful equal protection claim may be brought by a class-of-one, where "the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." Id. Olech, however, has since been limited by Engquist v. Oregon Dep't of Agriculture, 128 S.Ct. 2146 (2008), which held that the class-of-one theory of equal protection is not applicable in the public employment context.

> In concluding that the class-of-one theory of equal protection has no application in the public employment context – and that is all we decide – we are guided, as in the past, by the

> 'common-sense realization that government offices could not function if every employment decision became a constitutional matter.' If . . . plaintiffs need not claim discrimination on the basis of membership in some class or group, but rather may argue only that they were treated by their employers worse than other employees similarly situated, any personnel action in which a wronged employee can conjure up a claim of differential treatment will suddenly become the basis for a federal constitutional claim. Indeed, an allegation of arbitrary differential treatment could be made in nearly every instance of an assertedly wrongful employment action – not only hiring and firing decisions, but any personnel action, such as promotion, salary, or work assignments – on the theory that other employees were not treated wrongfully.

128 S.Ct. 2146, 2156 (citations omitted); see also Graham v. Hoffer, No. 1:05-cv-2679, 2008 WL 4570667, at *5-*6 (M.D. Pa. Oct. 10, 2008).

In Skrutski, 288 Fed. App'x 803, our Court of Appeals held that a class-of-one theory against four members of the PSP was a legal avenue which was "clearly foreclosed by the Supreme Court's recent decision that such claims are not cognizable in the public employment context." As observed in Bowman v. Burroughs, No. 07-185, 2008 WL 5427910 (W.D. Pa. Dec. 30, 2008), which held that Engquist applied to a police officer's equal protection claim alleging unconstitutional discharge against PSP officers:

> In Engquist, the Supreme Court explained that the 'class of one' theory of equal

> protection is inapplicable to the public employment context because 'employment decisions are quite often subjective and individualized, resting on a wide array of factors that are difficult to articulate and quantify.' This Court 'is not the appropriate forum in which to review the multitude of personnel decisions that are made daily by public agencies.'

Bowman, 2008 WL 5427910, at *16 (quoting Engquist, 128 S.Ct. at 2154; Bishop v. Wood, 426 U.S. 341, 349 (1976)).

Plaintiff alleges that Corporal Tripp treated her differently from other employees, because he tried to impose discipline on her, but not others, and made comments about her clothing. (Dkt. 52, at 13.) Plaintiff fails to allege how, if at all, Sergeant Hile violated her equal protection rights, and differentiates her case from Engquist by arguing that the results of the alleged discrimination occurred when she was a private citizen and no longer a public employee. (Oral Arg. Trans. at 21.)

It is clear that a former state employee may not simply create a discrimination claim by alleging "arbitrary differential treatment." Engquist, 128 S.Ct. 2156. "'[E]mployment decisions are quite often subjective and individualized, resting on a wide array of factors that are difficult to articulate and quantify.'" Bowman, 2008 WL 5427910, at *16. Moreover, the unsubstantiated assertions of Plaintiff that she was treated more harshly than coworkers does not constitute competent evidence upon which a reasonable jury could find in her favor. See Anderson, 477 U.S. at 248; Schoch, 912 F.2d at 657

("the object of Rule 56(e) 'is not to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit'"). Because Plaintiff is not alleging that the Defendants treated a distinct group of individuals differently, but instead, is solely rely on the class-of-one theory, which is unavailable in the public employment context, Defendants' Motion for Summary Judgment will be granted. See Engquist, 128 S.Ct. 2146; Skrutski, 288 Fed. App'x 803; Bowman, 2008 WL 5427910, at *16.

III. Conclusion

Because Plaintiff has failed to tender sufficient evidence to establish a prima facie case of First Amendment retaliation or violation of her equal protection rights, Defendants' Motion for Summary Judgment will be granted. An appropriate Order follows.

s/ Thomas I. Vanaskie
Thomas I. Vanaskie
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA

KELLY CONARD :

Plaintiff

v.

PENNSYLVANIA STATE POLICE, DENNIS HILE, JOSEPH TRIPP

Defendants

4:CV-06-01450
(JUDGE VANASKIE)

Entered February 25, 2009

ORDER

NOW, THIS 25th DAY OF FEBRUARY, 2009, for the reasons set forth in the foregoing memorandum, IT IS HEREBY ORDERED THAT:

1. Defendants' Dennis Hile and Joseph Tripp's Motion for Summary Judgment (Dkt.44) is GRANTED.

2. The Clerk of Court is directed to enter judgment in favor of Defendants Dennis Hile and Joseph Tripp on Plaintiff's claims, and to mark this matter CLOSED.

s/ Thomas I. Vanaskie
Thomas I. Vanaskie
United States District Judge

AO 450 (Rev. SIBS) **Judgement in a civil Case**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

KELLY CONARD

VS.

PENNSYLVANIA STATE POLICE,
DENNIS HILE, JOSEPH TRIPP

JUDGMENT IN A CIVIL CASE
4:CV-06-1450
Entered February 25, 2009

___ **Jury Verdict.**
XX **Decision by Court.**

IT IS ORDERED AND ADJUDGED

that judgment is entered in favor of defendants, Dennis Hile, and Joseph Tripp, and against plaintiff, Kelly Conard.

February 25, 2009
DATE

MARY E. D'ANDREA
CLERK

/s/ Joseph F. Gaughau
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA

KELLY CONARD,

Plaintiff

v.

PENNSYLVANIA STATE POLICE,
ET AL.,

Defendants

No. 4:06-CV-01450

Complaint filed 7/24/06

(Judge Muir)

ORDER
Entered August 6, 2007

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On July 24, 2006, Plaintiff Kelly Conard filed a complaint pursuant to Title VII of the Civil Rights Act of 1964. Named as defendants are the Pennsylvania State Police and Dennis Hile and Joseph Tripp, two individual employed by the Pennsylvania State Police. Plaintiff, a former Police Communication Officer with the Pennsylvania State Police, alleges that she was the victim of unlawful gender discrimination by the Pennsylvania State Police and that the individual defendants violated her rights under 42 U.S.C. § 1983 by "intentionally, willfully, and maliciously" disseminating "false and misleading information about Plaintiff with the

intent of depriving Plaintiff of employment." On April 3, 2007, Plaintiff filed a motion for leave to file an amended complaint. By order of May 31, 2007, the court granted that motion. At the time the court entered that order there was a discovery deadline of June 18, 2007, and a dispositive motions deadline of July 2, 2007. See Doc. 23, Order of April 16, 2007, page 2, paragraph 4 ("All motion to dismiss or for summary judgment shall be accompanied by supporting briefs and shall be filed by July 2, 2007.").

On August 3, 2007, Defendants filed a motion for leave to file a dispositive motion. Plaintiff does not concur in the motion. Defendants incorrectly state in the motion that the case is on the September, 2007, trial list, that the deadline for filing a summary judgment motion expired before the complaint was amended and answered and that they had no reasonable opportunity to file a summary judgment motion. The case is on the October, 2007, trial list. The amended complaint was filed on May 31, 2007. See Document 25, Order of May 31, 2007, page 4 ("The amended complaint attached to the motion is deemed filed as of the date of this order."). Defendants filed an answer on June 19, 2007. Defendants have not explained why they could not have filed a summary judgment motion after May 31, 2007 and before July 2, 2007, as required by our order of April 16, 2007. Consequently, we will deny the motion for leave to file a dispositive motion.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

Defendants' motion for leave to file a dispositive motion (Doc. 31) is denied.

/s/ Muir, U.S. District Judge
MUIR, U.S. District Judge

MM:gs

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 09-1837

Entered March 16, 2010

KELLY CONARD,

Appellant

v.

PENNSYLVANIA STATE POLICE;
DENNIS HILE; JOSEPH TRIPP

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 4-06-cv-01450)
District Judge: Honorable Thomas I. Vanaskie

Present: SCIRICA, Chief Judge,
SLOVITER, McKEE, BARRY, AMBRO,
FUENTES, SMITH, FISHER,
CHAGARES, JORDAN,
HARDIMAN, GREENAWAY and NYGAARD,*
Circuit Judges.

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* The vote of Honorable R ichard L. Nygaard, Senior Judge of the United States Court of Appeals for the Third Circuit, is limited to panel rehearing only.

SUR PETITION FOR REHEARING

The petition for rehearing filed by Appellant having been submitted to all judges who participated in the decision of this court, and to all the other available circuit judges in active service, and a majority of the judges who concurred in the decision not having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is hereby DENIED.

BY THE COURT:

/s/ Richard L. Nygaard
United States Circuit Judge

Dated: March 16, 2010
CJG/cc: Ms. Kelly Conard
Howard G. Hopkirk, Esq.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

4:CV-06-01450 No. 09-1837

Kelly Conard

V

Pennsylvania State Police, Dennis Hile,
Joseph Tripp

PETITION FOR REHEARING

I brought an action alleging the Department The Pennsylvania State Police (PSP) did not hire me in violation of my equal protection rights, based solely on the recommendations of defendants Hile and Tripp who unjustly and prejudiciously retaliated against me by lying to the background investigating trooper who did my background investigation for the position in which I applied. This was in exercise o fmy First Amendment rights which was violated.

I was employed as a Police Communications Operator (PCO) with the Pennsylvania State police for 17½ years from September 1985 to November 2002, when I voluntarily retired to join my now estranged husband who is a Pennsylvania State Trooper but volunteered to do a military commitment as since 9/11 the military was short handed. He took military, leave from the State Police (leave without pay but with benefits and also received a stipend from the state). As a civilian I tried to take a leave of absence but the *only* leave available to me was for sickness. I had no other option but to retire as my now estranged husbands' military commitment was for a minimum of 2 years or for as long as they needed him.

In my position as a Police Communications Operator (PCO), I was responsible for answering phone calls regarding police services and dispatching messages to state troopers along with other administrative duties. See attached application and resume VOL II PAGES 8-11 These functions are vital to the operation of each PSP station. Upon hire I was instructed that the state police AR and FR manuals were the 2 bibles of the state police. Administrative Regulations and Field Regulations.

During my employment with the PSP, each and every section had their own supervisors we reported to; staff services section, traffic section and the crime section. I was in the staff section in which I replied to Corporal Joseph Tripp and Sergeant Dennis Hile. My immediate supervisor was Corporal Tripp. He had only been at my station for approximately 1 Y2 years when I had already 15 years of service. He would single me out and treat me differently than other PCO's. For example I was verbally reprimanded for not properly identifying myself during a busy period, while other PCO's were not; Cpl Tripp refused to help me with paperwork that needed his signature as he was my supervisor, but on the other hand had just helped other employees sign in evidence. Signing in evidence would normally be done by the traffic section. He advised me that he didn't start until 7:00 am and it was approximately 6:50 am (my shift was over at 6:30 am but was still there on my own time). He even approached me on one occasion after a midnight shift and told me that what I was wearing was not acceptable. I had worn that same attire among other officers and not one of them said anything about what I was wearing. We did not have a dress code. I always was attired

nicely, even on my midnight shifts. He also refused me a personal day when I was involved in an accident and got out of my vehicle and had fallen on the ice and did injure myself as a result of the accident. I had to call a wrecker as my vehicle was wedge up against an embankment (this took approximately 3 hours.) The accident occurred on my way to work. Since he refused me a personal day I was forced to take a sick day see attached sick leave information, letter of proof from Richard Caschera and doctor's note from Dr Wise and Dr Piotrowski VOL II PAGES 12-17 when I returned to work with a Doctors note, he placed me on a sick leave restriction, although it was not appropriate in this situation. I brought some facts to Lieutenant Ken Hill, staff services commander attempting to gain assistance in resolving these conflicts, but Hill responded, "Just do what Tripp says." Lt Hill and Cpl Tripp were good friends as they had been stationed together at a different station and also because Tripp's father was a Captain and good friends with Lt Hill. They all golfed together. As you can see it is all in who you know. The higher ups are using their position in ways that violate all the "little people". If it wasn't for the little people the department would not function. The little people have no protection.

Sgt Hile was also involved in my placement on "sick leave restriction." And treated me unfairly and retaliated against me as a result of me going over his head. To report a shooting incident to his supervisor as he would not take any action in calling other members in to assist two troopers who needed back up as they were under fire. I broke the chain of command which is a big "no no" according to the

regulations AR and FR manuals of the state police but I had no other choice. Two Troopers lives were at stake along with other innocent citizens and they needed help immediately, not 3 hours later. Breaking the chain of command could call for someone being reprimanded. The phone call made to Sgt Hile's supervisor by me was in no way my job description. The State Police live by the rules of the Administrative Regulations and Field Regulations also know as the AR and FR, the members and civilians all refer to them as the bible of the state police. Each and every member/employee is given a copy of the rules and regulations. If you break the rules you would be reprimanded in some way and/or maybe even fired. This was Sgt Hile's job to make a decision according to the AR and FR and to take action on the shooting incident. He was the on call supervisor (officer of they day). See attached AR 1.02 Chain of Command...and an example of an Officer of the Day roster VOL II PAGES 18-21 and also past and pending suits VOL II PAGE 135. I called Lt Witherite who was the patrol supervisor who was off duty and I spoke out as a concerned citizen not only for the trooper's safety but for the citizens that lived in and around where the shooting was and advised him of the situation. He told me to call at least 5 individuals in and that he was on his way to station. (This is how the Officer of the Day would normally respond). Needless to say I expressed myself to Lt Witherite and advised I had broke the "chain of command" and he said to me "don't worry you did the right thing, I will take care of Sgt Hile". I am sure Sgt Hile either received a supervisor's notation and/or a lower evaluation.

After retiring from my position as a PCO to accompany my now estranged husband with his military commitment. I applied for a dispatching position at American Medical Response (AMR). This dispatching job was completely different than the PCO position. This job required more of a medical background than just a dispatching background as in most cases you are not only dispatching an ambulance but giving medical instructions through flip charts to the caller, in most cases a life threatening situation in trying to keep someone alive while the ambulance is in route. Linda Bonney, Director of Human Resources stated "she left this position after 3 months due to stress and compared it to a PCO position". I worked as a PCO for 17½ years and knew the job like the back of my hand. I worked alone for approximately 13 of my 17½ years of mid-night shifts and handled barricaded gunman calls, high speed pursuits, worked alone when the state police and local police would team up to do a saturated DUI checkpoint; sometimes 30 patrols. I have even testified in court on behalf of the state police, not to mention searched female prisoners. The midnight shifts were extremely busy on weekends, so not only did you have your everyday calls but your saturation detail as well. During these saturation details the DUI center would have additional help as it was so busy. Sgt R Scott Hunter can testify to the work load I handle. He would always say after those special details "Good Job". Being a medical dispatcher is in no way like a PCO. They did not mention that I resigned from American Medical Response and took a position at the Wichita County Sheriffs Department in Wichita Falls, TX and I held the position of a Records ID Clerk. This

position consisted of the administrative skills I was used to as a PCO and was more familiar with the law enforcement side. I worked there until my now estranged husband processed out of the military. See attached reference from my supervisor at the Sheriffs Department.

At the time of leaving the Sheriffs Department and knowing we would be returning, I contacted Dianna Davis of the Pennsylvania State Police, Bureau of Personnel and notified her I wanted to come back to work for the PSP as my husbands military commitment was up. I completed the necessary paperwork in August 2004 applied for a position as a PCO at the Harrisburg Centralized Dispatch Center the selection process for the PCO position consisted of an interview and a background investigation, both of which required satisfactory results in order to be selected for the position. **Please note they had done a background investigation on me when I first was hired in 1985 and then worked for them for 17 Y; years and had commendable and outstanding evaluations signed by the supervisors who told the background investigator the complete opposite.**

I interviewed for the position on January 4,2005 and I was told by Captain Robert (Bob) Scott; Director of the Consolidated Dispatch Center that I "aced the interview" and just needed to get the formalities out of the way. I also spoke to Sgt Lambert; supervisor of the center who advised me that he didn't know what he was going to do with me as I already had ½ of the training completed during my 17½ years. I only needed trained on the new CAD system. I suggested that he could sit me with someone for those two weeks to get a jump start on

the new system and hit the ground running again; he agreed that was a good idea. In the meantime Captain Bob Scott called me and advised that there was a supervisor's position available and that I should also apply for that as I had more than enough experience to do that job. I had known Captain Scott for many years as I was stationed with him. He was aware of my work ethic and was anxious to get me back on board. In our reunion, before my interview Capt Bob Scott told me that there were 6 "PCO's" hired at the Norristown Consolidated Dispatch Center and then fired as their background checks were not completed before their hire and that they were all fired due to having criminal backgrounds. Captain Scott personally walked me back to where my interview was taking place and he told Sgt Lambert and the other two supervisors to give me an "especially hard time" as *she is one of us*. I had more time on the job than the one supervisor did. Sgt Lambert called Dianna Davis at the Bureau of Personnel and it was decided that my starting pay would be around $20.83 an hour, approximately what I was making when I retired to accompany my now estranged husband who is still on the job.

In early February 2005 I was contacted by Trooper Kimberly Elling now (Patterson), she married Trooper Kevin Patterson in which I have known for years as we were at the same station. She was conducting my background investigation, although she was not a criminal investigator. She enlisted with the State Police 9/7/1999 and was not assigned to the crime unit until 11/5/2005. **Please note my background investigation was in February 2005. She was not qualified to do the job and further more should not have been given this assignment;

not to mention that at that time my former supervisor (Sgt Hile) was her station commander and I knew her husband. In my 17½ years the person assigned to do a background check was 1) a criminal investigator 2) the person assigned to do a background was not from your troop as it is a conflict of interest. I told her that due to my now estranged husbands' divorce (he was a trooper and is presently a Corporal (supervisor) at the Pennsylvania State Police Academy as an instructor; since his enlistment date 1995), that our credit was ruined since he had no legal representation when he divorced from his prior wife. He ended up with all debt from that marriage which I then took on and tried to help by consolidating his debt onto mine. My credit was exceptional prior to my marriage to him. She advised me not to worry about it that there are individuals already on the job who have claimed bankruptcy and that she only wanted to know what I had been doing the last two years as they had already done a background investigation when I was first hired in 1985. I advised her of both positions I had while in Texas; the one with AMR (American Medical Response) and the one with the Wichita County Sheriffs Department.

My former supervisors Cpl Tripp and Sgt Hile indicated to Tpr Elling/Patterson and also a 3rd party "outside" the department (a professional reference company Allison and Taylor out of the state of Michigan): who conducted a professional reference check) See attached reference checks done by Allison and Taylor VOL II PAGES 22-25 Cpl Tripp told them he would not re-hire me because I abused sick leave, didn't get along with my co-workers, couldn't take constructive criticism, and

that I only worked midnights so I didn't have to deal with anyone; however my last 3 years of employment and my performance reviews completely show opposite of what they told Elling, the trooper who did the background investigation. Those performance evaluations are done yearly and my last 3 are all signed by Tripp and Hile, the same supervisors who gave false information to tpr Elling. Tripp and Hile did my last 3 performance evaluations giving me commendable and outstanding ratings. If Trooper Elling/Patterson would have documented what Sgt R.Scott Hunter said; who was a supervisor and worked permanent midnighters with me at one point and was interviewed by trooping Elling; she would of known that I never abused sick leave as I have spoken to him since and he has related to me that he remembers me bringing boxes of tissues to work and worked when I should have been off sick. He also related to me that he told her I should be in a supervisor's position and that I should definitely be hired at the new Consolidated/Centralized Dispatch Center as I would be a valuable employee/supervisor. Sgt R Scott Hunter is a well regarded supervisor in all eyes and is now a Lieutenant. As a matter of fact I recall and incident when a new trooper still is being coached by a senior trooper, the senior trooper called off sick to spend the night with his girlfriend, but called the new trooper he was coaching and told him to cover for him in case his wife would call the station. I could not believe that this senior trooper put that stress on a new trooper whom he was coaching and to be setting an example for the new trooper. The new Trooper was still on probation. I relayed that information while working a mid-night shift to Sgt R

Scott Hunter who was working that night and he initiated a BPR Bureau of Professional Responsibility Investigation. That senior trooper who did that is now a Sergeant and a station commander. What fine leadership! 4) **When I retired they had to pay me for all the sick leave I did not use.** When and if I was off, I either had a doctor's note for myself or a note that J needed to be off for a family member. I do recall being off when my now estranged husband had surgery and was sent home catheterized and my son who has had same day surgery. I have in no way abused sick leave. 5) **My performance reviews that are mandatory by the state police yearly all indicate that either I exceeded department standards or consistently exceed department standards. See attached performance evaluations of my last 3 years of employment VOL II PAGES 26-39.** I only have 1 satisfactory and the definition of satisfactory is **"meets all department standards in a fully adequate manner".** The sick leave restriction was placed on me the day after my accident. **There is no other documentation as these two supervisors Hile and Tripp lied to the investigating trooper.** Please note that there are several cases pending that are the same and/or similar to mine. The higher ups on the State Police are using their rank to inflict and/ or sabotage not only little civilians like myself but other ranking officers under their command. As a matter of fact the Pennsylvania State Troopers Association has a suit pending and one of the defendants is the former commissioner Jeffery Miller. The suit is the same as mine as it has to do with retaliating and 1st Amendment rights.

In the Memorandum Trooper Elling stated "plaintiffs credit history revealed financial problems" "plaintiff attributed these problems to her divorce. It wasn't my divorce; it is my now-estranged husbands' divorce who is now a Corporal/Supervisor at the Pennsylvania State Police Academy. He trains new cadets. Since he is a supervisor he now has contact with my former supervisor's. I am certain this had made a significant impact in retaliating against me as I am not on the inside anymore. It had stated "of the 14 accounts, 10 were opened after her divorce" These accounts were opened jointly with my estranged husband Cpl Conard prior and during our marriage as he chose not to have any legal aid in his prior divorce proceedings. He has been on the job since 1995. I started in 1985. I tried to help my now estranged husband in consolidating his credit onto mine in order for him to get a security clearance to do his military commitment. He is a Captain in the Air Force and even they questioned his credit. We actually had to meet with some administrative individuals when he was doing his initial paperwork for the military (United States Air Force). I might add that my now estranged husband let our home go into pre-foreclosure/foreclosure as he contested the anti-nuptial agreement which left me in no position to pay for the property. He also quit paying on our vehicle loan with an outstanding balance of approximately $15,000.00 gave the bank false information. He has not made a payment on the residence since August 2008. He has not made a payment on the vehicle since June of 2008. I have managed to keep the vehicle up to date. Please note section AR 1.27 Rules of Conduct for employees page 10 section K payment of debts also FR 1-1 1.27 VOL

II PAGES 40-50. The only reason for my credit not being good is because of my now estranged husband Corporal Conard who is an instructor/supervisor at the Pennsylvania State Police Academy. I might add that my former ex-husband was a trooper also for 25 years and he went through a divorce in which his home was going into foreclosure; I actually helped him revamp his credit prior to marring him by putting his name on a rental property of mine. When we went for a loan to build a house, the bank wanted a letter as to why his credit was the way it was. As you can see; I have been the one who has tried to revamp both of their credit issues which has hurt mine. However; both of them remain or did remain on the job until retirement.

The memorandum indicates that there was a basis for my having been placed on sick leave restriction. This is not the case I was placed on a sick leave restriction after I requested a personal day due to being involved in a motor vehicle accident January 18, 1999 in which I was injured. I did not receive any corrective counseling as stated prior to this restriction. Cpl Tripp said he would not approve a personal day so I was forced to take a sick day. I returned to work with a doctor's note and they placed me on a sick leave restriction. The Bureau along with the background investigators report failed to correctly state my employment when I was stationed in Texas. Trooper Elling/Patterson background investigator and Linda Bonney, Director of Human Resources had not correctly listed my job or job duties. She merely made her own assumptions as to what the job entails.

a) They failed to recognize that Trooper Elling/Patterson was not qualified by the

department's own standards to conduct the background investigation and that her station commander was Sgt Hile (Hile was the supervisor that gave false information to Elling, the trooper who did the background investigation) and that I knew her husband this made it improper for her do so even if she had been qualified. I have written documentation/ proof and witnesses that the supervisors Hile and Tripp said all the negative comments and lied to her when she interviewed them. They tried to retaliate against me because in the course of my 17½ years employment as I had gone over their heads when I felt that the one supervisor made a wrong decision during an officer safety issue. I went to a higher authority that was off duty and he agreed and sided with me. Later, when Ire-applied after a military commitment the same supervisors had an opportunity to retaliate against me. They did so without a basis or any type of documentation. The same two supervisors did my yearly evaluations giving me commendable and outstanding evaluations and had all good comments along with the rating. By me going outside the chain of command ultimately made him look bad which may have been documented on a supervisory notation, or perhaps noted in his annual evaluation. I broke the chain of command in order to protect not only the troopers who were in the line of fire but also the innocent citizens of the

commonwealth. I had made calls to them to ensure they stayed inside the residence as there was an intoxicated individual firing shots outside his residence. The incident my troopers were on was the same type incident/situation. Trooper Paul Richey was on and he was just killed in the line of duty; He was an outstanding trooper with 16 years of service.

b) It was an error to find that the phone call to Lt Witherite was made during the course of my duties as a PCO. Lt Witherite was off duty. I broke the chain of command which is against the rules in order to protect not only the troopers but the innocent citizens.

c) It was an error to find that my phone call to Lt Witherite was not a matter of public interest. The public has an interest in whether officers in life threatening situations are properly protected and not to mention for their own safety.

I am respectfully asking for a rehearing for an en banc panel to review what I have presented and grant me a jury trial so that I would be given a fair chance. They allowed their summary judgment and I would be so grateful if the courts would honor me an opportunity and to be given a chance through our judicial system to explain to the courts myself in detail what has really happened in this case. For a jury to make the decision with the facts of both sides presented to them. I have presented all my facts to Arlen Specter, United States Senator and Steven Cappelli, State Representative. They have all been

in agreeance and are supporting me as I have proven facts that Hile and Tripp lied to the investigating trooper. I was even at one point was instructed by them to contact a lawyer. See attached letters from Specter and Cappelli VOL II PAGES 96-97. The most important fact is that I worked for this very department for 17 ~ years and was well regarded for by other supervisors, and co-workers, not to mention well regarded for in a completely different state meaning Texas; another police department see attached recommendations and letters of appreciation VOL II PAGES 98-113. If I was good enough to be employed by The Pennsylvania State Police for 17½; years and my evaluations all speak for themselves, along with all my recommendations. I even received a "Meritorious" award at my 15 year mark from Sgt Hile, my former supervisor who told the investigating trooper Elling "I was not a good employee". How can someone possibly get a meritorious award if they in fact were not a good employee? In the past 5 years I have kept track of all new employees (PCO's) by the State Police Communicator, a department publication. They have hired at least 100 individuals in my job capacity even when there was a freeze on hiring. Everyone knows that an experienced police dispatcher is a very valuable one. See attached training certificates VOL II PAGES 114-121. I have also included in the appendix VOL II PAGES 140-145 the background history for you to review. The courts are unaware of the corruptness and everything else that happens behind closed doors of the Pennsylvania State Police. I have included in VOL II PAGES 122130 some articles of past and current suits for you to review.

I truly believe and Pray to God that the judicial system will not fail me. It is my sincere hopes and prayers that I am granted a rehearing and a fair trial.

December 19, 2006

Capt. William J. McHale
Director, Legislative Affairs Office
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, Pennsylvania 17110

Dear Captain McHale:

Recently my office was contacted by Kelly Conard regarding an ongoing employment issue she is having with the PA State Police.

Mrs. Conard was employed by the PA State Police for 17 years in the capacity of a Police Communications Operator. Her husband, a trooper was recalled to active military duty for a minimum of two years and had to relocate to Sheppard Air Force Base in Texas. Due to this circumstance, Mrs. Conrad retired to go with her husband with the expectation of being eligible for reinstatement upon their return. She was denied reemployment in 2005 for alleged sick leave abuse and interpersonal conflicts with coworkers.

Mrs. Conard has provided my office with extensive documentation by way of performance evaluations that refute her former PSP supervisor's negative comments.

Mrs. Conard is requesting that her case by reviewed by the PSP Commissioner. It is her hope to return to her position as a Police Communications Operator.

I would greatly appreciate your response to this inquiry and thank you in advance for your time and consideration. Please call Cheri in my office at (717)

787-6815 if you have any questions or need additional information.

Sincerely,

Steven W. Cappelli
State Legislator
83rd Legislative District

SWC/ch

December 6, 2006

Capt. William McHale
Director of Legislative Affairs Office
Pennsylvania State Police
1800 Elmerton Ave.
3rd Floor, Departrment Headquarters
Harrisburg, PA 17110

Dear Capt. McHale:

My office has been contacted by Kelly Conard regarding employment problems with the Pennsylvania State Police (PSP). Mrs. Conard is a 17 year veteran of your department and well regarded by her former coworkers. She provided background information relating to her retirement from the PSP; namely her husband, a trooper was recalled to an extended active military duty in 2002. The PSP later denied re-employment to Mrs. Conrad in 2005 for alleged abuse of sick leave, performance issues and interpersonal conflicts.

Although you are most likely aware of this case, Mrs. Conard provided my office with performance reviews that allegedly refute negative remarks made by two of her former PSP supervisors. In addition, Mrs. Conard has provided documentation relating to providing notes(s) from her health care provider during her employment.

It is at the request of Mrs. Conard that her case is reviewed by the PSP Commissioner. If possible, Mrs. Conard seeks future employment with the PSP and requests a reasonable resolution to this ongoing struggle.

Your findings and views are greatly appreciated. Please direct your response to Ray Smith, of my

Capital Region office, at US Senator Arlen Specter, PO Box 1093, Harrisburg, PA 17108 or by fax to (717) 782-1920. Should you have any questions or need additional information, please contact my staff at (717) 782-3951.

Thank you for your time and assistance.

Sincerely,

/s/ Arlen Specter
Arlen Specter

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BACKGROUND HISTORY

I started working for the Pennsylvania State Police September, 1985; I was a 19 yr old kid. I was even referred to as "the kid who was still wet behind the ears!" Those words were spoken by the old timers (State Troopers who had anywhere from 1520 plus years on the job. I had my share of ups and down throughout my life. I had been attending the Williamsport Area Community College, now the Pennsylvania College of Technology, and learned of a position with the PA State Police by a dear friend of mine Dottie Brink. I decided to apply as I did not want to leave my mother, a widow, alone. I was then hired with the State Police. I had my son in March 1987, and being a single working mom, realized how important it was to be involved with my son as much as possible. I had gone to a Lieutenant and asked to work a permanent midnight shift, which was working 10 days in a row to have every other weekend off. I would start out by working a 7-3 shift on Monday and Tuesday, then go back in Tuesday night 11-7 shift to start the mid-nights Out of my 17 yrs, I can honestly say that I worked probably 12 years of midnights. This allowed me to spend as much time with my son, go to school if needed and also work. *During those* 17 *years I had the utmost respect/or the Pennsylvania State Police and I was proud to say I worked/or the Commonwealth of Pal*

I married my **now estranged husband (due to numerous affairs prior to and after my retirement)** Sean Conard in December of 1999; he is a Pennsylvania State Trooper, now a Corporal at the Pennsylvania State Police Academy, not to mention a Captain in the United States Air Force. Needless to say, we had only been married a short while when

9 11 happened. The military at that point was short handed on officers, as a lot of them were deploying. He was recalled to active duty and he had a choice to make - and so did I - his being stationed in the United States with his family or the Republic of Korea for a year without family. We agreed to take the Texas assignment as it would keep our family together. The active duty orders were for a minimum of two years - or for that matter - as long as they needed him. At that point, I contacted the State Police Bureau of Personnel to see if there was any kind leave of absence I could take. The only kind of leave you can take is unpaid leave at the sole discretion of the employer and was told I would not qualify. I only had one option and that was to retire, keeping in mind that I could be reinstated upon return.

Sean, being a State Trooper was able to be placed on military leave and when finished with his commitment go right back to where he left off. Sean had his orders to report early November, 2002 and I stayed behind to take care of everything else (selling the house, getting my son ready to transfer from one Jr High to another, etc.) until December 2002. We had to sell our home in which we had done extensive remodeling; thinking we would be there for a while (having good jobs and especially me with a 17½ yr career and retirement at an early age, not to mention a good one)! **Anyway, you can just imagine, being in a situation where you are comfortable, know your job like the back of your hand and all of a sudden you have a greater responsibility and that is to serve your country!** I retired November 22, 2002.

We were station at Sheppard Air Force Base in Wichita Falls, Texas. We were 24 hours away from

friends and family! My **now estranged** husband purchased a book for me as I had never been married to an officer in the United States Air Force; the book being *The Officer's Wives Guide*. I quickly realized I had a job just as important as his and that was representing my now estranged husband and my Country. While we were in Texas I worked as a medical dispatcher for a short while. I didn't like the medical field as in most cases you were trying to keep someone alive until the ambulance crew arrived. I terminated that position and applied as a records ID clerk with the Wichita County Sheriff's Department. I worked mid-nights there, as well When I was interviewed for that position, they said your "**background speaks for itself**". They told me I would be working with an individual named Andy that most people couldn't work with-that even had a couple of girls quit. I simply responded to them with my background "I can handle ole Andy." Andy was a great individual; you had to just know how to take him. When I had left the Sheriff's department Andy was upset because he liked to work with me. He was an old timer, if you will, and knew his job like I had known mine with the PA State Police. As a matter of fact he had become very ill and was even on dialysis. He would call me at night just to chat, as he hated not to be at work. I have learned since he passed away. I was told if you can get along with Andy you can get along with anyone, but of course not according to the statements made by my former supervisors - Tripp and Hile!

In late October 2004, my now estranged husband Sean came home with news that he would have completed his minimum commitment. They knew he was a State Trooper and that I had a 17½ year

career to get back to. They really wanted us to stay, but I said "no way" because I needed to get back and hit the ground running and work for that great retirement.

I had kept in contact with other co-workers and not to mention at one point talked to Hile. I told him I hated Texas and couldn't wait to get back. He asked how Sean was and we had probably talked for 15 minutes or so. Hile said to me **"let me know if there is anything I can do to help when you get back, I will help you in anyway I can."** Hile is the one who told trooper Elling, (the trooper who did my background check), that I didn't take my job seriously. I had gone above his head at one point in my career; he had been a sergeant and was assigned Officer of the Day (OD), which means if something serious or a major decision needs to be made, he would be contacted and needed to make those decisions. I had a shooting incident where an intoxicated individual was firing shots. We worked 2 cars on a mid-night shift - a North/West and South/East patrol- each with two troopers in the vehicle. My other car was tied up on another call I had one car to send on the shooting incident. My troopers had arrived at the scene, they said that the individual was firing in their direction and in and around other homes. It was one of those situations that someone was either going to end up dead or seriously injured. They told me to call the OD, which was Hile, and tell him they needed some back up. Hile responded, "Wait and see if the other car can break free, just to sit on it awhile!" I relayed that information to the troopers and they responded to me call the OD back and tell him we need help immediately in setting up a perimeter and protecting

the public from this individual Again after a second call telling Sgt Hile that they needed help, his response was that "the 6:00 a.m. patrol would be out soon." This was three hours later. I again relayed that information to the troopers and their response was do whatever is necessary to get us help. At that point I had no other choice by to take matters into my own hands and I broke the chain of command by calling a Lt Witherite, who was the Patrol Section Commander **(who was off duty)**. I explained the situation to him and his response to me was calling at least 5 individuals in on overtime and that he would be in himself. This is how an OD would normally respond. I told Lt Witherite I had broken the chain of command and was worried, as that is a no no. He reassured me, you did the right thing and that he would handle Sgt Hile. **I suspect that Sgt Hile must have been addressed by his superiors. To this day he holds it against me. It seems so funny that while we were in Texas he said he would help in anyway he could when I returned from Texas so I could hit the ground running and then to tell the background investigator, I didn't take my job seriously!**

The longer you are employed at a department like ours you learn to listen and absorb as much information as you can. Tripp made it well known that his Father was a Captain, but he was not at our troop. However you know that Daddy, being a Captain, would take care of his son and had a great amount of pull within the department. There are many examples of how the rules are applied differently. **It is also well known that you may win the battle but not the war with this department.** A clerk not being allowed to take some time to deal

with a child, but a **Troop Administrative Manager, a higher up** being allowed to bring their child in to the station and be cared for during work hours as a sitter was not available. Another example is when a Lieutenant took a co-worker of mine out in a state car to show her his son's residence that was up for sale. A civilian is not typically authorized to be in a state car unless it is directly job related. A complaint filed on him in Harrisburg and they issued an investigation, which came back **unfounded**! The same type situations that are happening now with the higher ups (brass) using their ranks to help cover up all the corruptness. They brought up a sick leave restriction. I know for a fact that there are individuals who owe the state sick time and they have 10 or fewer years. When I retired after 17½ years they owed me time.

Tripp was the one who caused most of the problems. For whatever reason, he just didn't like me. When he transferred to the Montoursville Barracks I had already been there and had been working steady mid-nights. He did not set a good example of what a supervisor is to represent. He continuously made comments about our coworkers and you could tell who his favorites were. I was not a "suck-up" by any means. I did my job in a professional manner and got along with everyone. I am not saying in anyway that I was perfect. As you can tell by references and the recommendations, they are all good and I worked with each and everyone of them. I have called the barracks just to chat with some of my co-workers and of course the lines are recorded, so I limit my conversation. None of them can believe it; I think they were just as shocked as I was. In fact a lot of them would come to

me for direction and guidance, as I had been there a lot longer and knew my job well!

Ways Tripp singled me out. ..

I was married and divorced a second time from a retired Trooper and had built a home that was a $260K home. I was working the desk, with another individual and we were discussing builders, as he was planning to build a home. Tripp was in the communications room sending something on the computer and made the comment "the home you use to have" and laughed. I didn't say anything as it didn't matter to me. Everyone knew Sean my now estranged husband and I both had gone through divorces and that he lost everything. Tripp just had to through a dig in while listening in on my conversation

Another time, I and another PCO were working a daylight shift and it was extremely busy. The phones were ringing off the hook so we both were answering the phone "State Police" instead of "State Police Montoursville, PCO Conard" Tripp had called the desk as he needed to have something printed or needed assistance of some kind and he responded to me "Kelly, you didn't identify yourself." I apologized and advised him we were extremely busy. He later called a second time and I answered again "State Police" and his response was that "this is the second time." I again expressed how busy we were. He came out later to the desk and laid a desk memorandum (note pad) in front of me and ordered "Sign it!" I asked him "Did you give everyone one of these" and his response was "No, just you!" I said to him "Why are you picking on me?" He said "Just sign it!" I told him I don't sign desk memorandums but to put it on

a STD-501 which would give me the opportunity to respond and be kept in my file. He then grabbed the paper from in front of me, crumpled it up and went storming out of the room. In the meantime I asked the other female PCO, who received more favorable treatment based on her physical appearance and demeanor with the male staff, if Tripp called and said anything to her and she said "No." She was answering in the same manner I was and did receive calls from Tripp and he never said anything to her. The result of this was that he never did a STD-501 and I believe he knew that I was aware he was picking on just me. The outcome was a post-it taped to the console that everyone had to initial. This just proves he knew he was picking on me and I was well aware of it.

Another incident was when I had worked 3 consecutive shifts because other PCO's called off sick. I was called by Cpl Craig Miller and asked if I wanted to work overtime - and I never refused. I came in on a 3-11, continued into an 11-7 and then finished on a 7-3. Lots of overtime! When it came time for me to do my timesheet, I wasn't sure of how to enter all that overtime and Tripp had been in the communications room and it was 6:45-6:50 AM. I said "Hey corporal, could you help me with this timesheet as I am not quite sure how to enter this overtime." His response was to look at his watch and then the clock on the wall and said to me "I don't start until 7:00." I was there past my own shift, as I was to be done at 6:30 AM. My now estranged husband Sean worked that same shift, as we worked permanent midnights often together, and on the way home I told him about Tripp. My husband said "that's funny he was in the back signing in evidence

from the midnight shift which was before he even came out to the desk so it had to be just after 6:00 a.m." He obviously was on the clock for them, but not for me!

Another incident is when he stopped me in the hallway as I was leaving from a midnight shift and approached me about what I was wearing to work. I asked him what was wrong with what I am wearing. He said "Don't wear that to work." I was attired in an outfit that other supervisors had seen me in before. He even asked one of my co-workers if that's what I wore to work. He never approached anyone else about their attire. Reminding you, I had been on the job at least 14 yrs at that point and was never approached by any other supervisor regarding my attire. Just prior to that incident, we had a saturation DUI patrol scheduled for a midnight shift. When they have this type of enforcement, it is really busy as you probably have 30 guys on the road. They typically call someone in for those hours to help the desk person, usually 2300 hrs to 0400 hrs. None of the other PCO's wanted to work so Tripp came in that night. He was attired in a pair of [DU] cut-off shorts, a black T-shirt with some type of vulgar comment on it and a wad of chew in his mouth and a spit bottle in hand. This is conduct unbecoming of an enlisted member, especially in view of the public. He is to be in uniform. He actually made fun of another PCO that night by saying "Hey Kelly look at me I am Carol" and waddling around the room in an offensive manner. Carol was heavy and had back problems. While he was imitating her, I said to him "You know corporal, Carol does have a bad back." He realized I was not

going along with him and then he just laughed it off. Again what fine leadership!

After these incidents took place I decided to go to the Staff Section Commander who was Lt Ken Hill, now a Captain. I said to him that Cpl Tripp is picking on me and for whatever reason I don't know. I asked him if he could call him up to his office so that maybe whatever it was he didn't like about me we could get it out in the open so that we could back on track. That lieutenant's response to me was that he agreed with him (Tripp) and "just do what he says." I know for a fact that Lt Ken Hill and Cpl Tripp were "good buddies," as they worked at a substation together. Tripp's father was a Capt, so obviously Lt Ken Hill would not ruin his chances of being promoted later by not agreeing with Cpl Tripp. I ran into a retired Sgt, later, and he asked when I was going back to the State and I told him what had happened. I didn't mention any names, only the fact it was a corporal who had done this. He said "it wouldn't happen to be Joe Tripp" and I was flabbergasted! He told me he was at the substation and worked with both of them and Tripp, being a trooper, told Ken Hill everything. Another interesting fact is that when I worked at the substation Milton, Hill was there for awhile as a supervisor. He saw me attired in a Kahn Tennis outfit which is very dressy athletic apparel. It was silver in color with some pink. Hill joked with me and said "What are you a Martian?" They were joking and the attire was not in question, then. I was dressed in better attire when Tripp approached me at Montoursville.

Another incident is when Paul Bardnt would come in to do the speed calibrations at usually 5:00-

6:00. I became good friends with Paul and even fixed him up with a good friend of mine. My friend's father was a retired District Magistrate. My friend and Paul are now married with a son. When Sean (my now estranged husband) and I came back from the military assignment I had seen Paul and he asked when are you going back with the state? With embarrassment told him that I had prior supervisors had mouthed me. He asked who they were and r told him Tripp and Hile. He said "You know, I remember being in the back getting keys to the vehicles and small talking with all the guys. I mentioned you and Tripp made a comment, something to the fact that he didn't care for you." This occurred when I was still employed under his supervision. He didn't know Paul and I were friends.

Another incident is when I was on my way to work for a 7-3 shift and was involved in a motor vehicle accident. The one neighbor heard the impact against the embankment and his outside light came on. I happened to know him as he was the fire chief for Loyalsock Township. As I was walking to his house, I fell on the ice and injured myself. I got to the door and asked if I could use his phone as I needed to call work and a wrecker and for someone to come and get me. I called worked and told one of the other Police Communications Operators to mark me off on a personal day, that I had just had an accident. Sean my now estranged husband came and picked me up. Cpl Tripp had called after I arrived home and told me he was not approving a personal day. I was forced to take a sick day and then placed on a sick leave restriction when I returned with a doctor's note.

I think the courts need to be aware that the incidents that are happening are being covered up by the higher ups and that the little people have no protection and have to rely on our judicial system to make things right. I found articles after doing some research on corruptness that was happening even while I was employed and that I wasn't even aware of. They continually try and cover things up. We little people have to rely on our justice system. It stands the reason, how can someone be good enough to work at a department for 17½ years, get commendable and outstanding ratings, not to mention be issued a Meritorious award and yet have the same supervisor that issued the award and the exceptional evaluations retaliate against you because you being a little person made a better decision than he and not to mentioned probably saved a life or two. They intentionally lied to the investigating trooper in preventing me to get re-hired. They bring credit issues up but in the same manner have thousands of employees including my now estranged husband who is a Corporal (supervisor) at the State Police Academy, who has extremely bad credit and not to mention those who have claimed bankruptcy. My credit now is a result of my now estranged husband Corporal Conard, who continues to be employed with the Pennsylvania State Police. If credit was an issue, the commonwealth would have half the employees as everyone in today's economy is either struggling or maybe dealing with a divorce. I have been struggling with this lawsuit since I returned from the military commitment in 2005 in hopes that the judicial system will not fail me.

A.R. 1.02

C. Chain of Command

1. Chain of command is the normal and logical progression of supervisory and command function within the Department.

2. Personnel shall adhere to, and utilize, the chain of command except when prevented by exigent circumstances, when exempted by existing regulations, e.g., AR 4-26, Sexual Harassment Policy. Personnel shall not bypass the established chain of command without first consulting with the appropriate supervisor.